

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE HUNTINGTON NATIONAL BANK,
successor to Fidelity Bank,

Plaintiff,

v.

CASE NUMBER: 12-13474
HONORABLE VICTORIA A. ROBERTS

CENTRE COURT PROPERTIES, LLC,
ROBERT W. KIRK, ROBERT S. HUTH
and KIRK & HUTH, P.C., jointly and severally,

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION TO COMPEL COMPLIANCE WITH PRIOR COURT ORDER (DOC. # 37)**

On December 5, 2013, Huntington Bank ("Plaintiff") filed a "Motion to Compel Compliance with April 12, 2013 Order or, In the Alternative, For Appointment of a Receiver." (Doc. # 37). Defendants oppose this motion. The Court considered the arguments of the parties and discussed the motion with counsel on two occasions.

Plaintiff brought this action to recover money due under a commercial real estate loan in default; Defendants defaulted by (1) failing to repay the loan in full at maturity and (2) failing to pay taxes assessed against the property securing the loan (the "Property"). On April 12, 2013, the Court entered an Order requiring – among other things – that beginning May 1, 2013, Defendants must pay:

(1) \$8,000 per month to Plaintiff for rent; and

(2) \$5,000 per month to taxing authorities for past due tax liability (for the years 2011, 2012, and 2013) on the Property; and Defendants must provide Plaintiff with the receipts each month confirming the tax payments.

Plaintiff brought this motion because Defendants failed to pay rent from August 2013 to December 2013; Defendants also failed to make the \$5,000 payments to the taxing authorities from June 2013 to December 2013. At the time Plaintiff filed this motion, the total outstanding due under the Court's Order was \$40,000 in rent and \$35,000 in taxes. In addition, interest and late penalties were assessed against the Property because Defendants failed to make the tax payment; this increased the Property's past tax liability.

After Plaintiff filed the motion, Defendants made a lump sum tax payment of \$35,392.28 in an attempt to satisfy all past taxes due for 2011. As of January 16, 2014, however, there still remained a balance of \$386.04 past due for 2011.

Defendants' lump sum payment satisfies their tax payment obligations from June 2013 to December 2013. They still owe \$40,000 in rent for that period. In addition, Defendants have not made the tax or rental payments for January 2014. Therefore, the total amount due under the Court's April 2013 Order is \$48,000 for rent and \$5,000 for taxes.

Defendants argue they should not have to pay rent because Plaintiff voluntarily dismissed its claim for judicial foreclosure. They provide no support for this assertion. Defendants are not entitled to relief from the prior Court Order; they must continue to make the rental and tax payment until this case is resolved. This is warranted based on the fact that Defendants: (1) continue to occupy the Property; (2) still lease space to paying tenants; and (3) have not satisfied their obligations under the loan and accompanying documents.

Plaintiff's Motion to Compel Compliance is **GRANTED**. The Court Orders that by

January 24, 2014, Defendants must:

- (1) Pay Plaintiff \$48,000 for back rent owed under the Court's April 2013 Order;
- (2) Pay taxing authorities \$5,000 to satisfy the January 2014 payment;
- (3) Pay taxing authorities \$348.04, for the remaining tax due for 2011; this is warranted based on Defendants' willful and repeated noncompliance with the Court's April 2013 Order;
- (4) Provide the Court, and Plaintiff, notice of these payments by filing a Notice of Compliance, with supporting evidence; if Defendants fail to comply with this Order, Plaintiff may move for sanctions and/or an order holding Defendants in contempt. The Court's April 2013 Order remains in effect.

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: January 16, 2014

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on January 16, 2014.

s/Linda Vertriest
Deputy Clerk